

REMARKS/ARGUMENTS

Status

Claims 6, 14 and 22 have been cancelled by the present amendment and no claim has been added. Independent claims 1, 9, 17, 33, 41, and 63 with attendant claims depending therefrom will remain for further consideration.

Claim History

The Examiner rejected claims 17-24 and 33-38 under 35 U.S.C. § 101. The Examiner rejected claims 1-24, 33-48 and 61-70 under 35 U.S.C. § 103 over Bracho in view of Applicant's allegedly admitted prior art.

35 U.S.C. § 101

The Examiner rejected claims 17-24 and 33-38 under 35 U.S.C. § 101. This rejection is respectfully traversed. The Applicant reiterates its argument from the previous response that there is no requirement for an Applicant's invention to be embodied in any physical form. See also the recent Board Opinion, *In re Bilski*, Appeal No. 2002-2257, "We interpret the State Street and AT&T test of a "useful, concrete and tangible result" to be limited, at present, to claims to machines and machine-implemented processes, i.e., to the "special cases" of claims that might be within § 101 because they recite structure, but which involve an abstract idea issue. [Cite Omitted]." (p. 23-24.) Also, "Third, the Interim Guidelines state that a transformation or reduction of an article to a different state or thing is a statutory practical application. Interim Guidelines, 1300 O.G. at 146. "This perpetuates the misunderstanding that "transformation" requires transformation of a

tangible object or article, contrary to cases that explain that the subject matter transformed can be physical, yet intangible, phenomena such as electrical signals. See *In re Schrader*, 22 F.3d 290, 295 n.12, 30 USPQ2d 1455, 1459 n.12 (Fed. Cir. 1994)” *Id.* at 37.

Instructions fall within machine-implemented processes.

However, the Applicant has also amended the claims to recite a “practical application” of the transformation of the signals, namely, to determine from the value of a received signal (“event information”) whether to affect a change in network switch by executing a set of program instructions. This “practical application” of the signal, without any other physical embodiment of the claims, would alone be sufficient to meet the requirements of § 101. However, many of the claims as amended recite ample physical structure such that not all of the steps could be completed by a person. Claim 17 as amended includes physical limitations such as “a communication coordinator in said first line module” and “an event publisher on said second line module” These components are defined in the specification and cannot be redefined by the Examiner to be a mere human operator. Claims must be considered in light of the specification and drawings. See *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings.”). Additionally, the preamble contains recitations of the physical environment of the network switch, and referral to the recitations within the body of the claim back to the preamble further physically embody the claim recitations. Claim 33 includes “instructions by a communication coordinator within a first line module” and “processors within a control module.” The physical embodiment of the claim can be in processing signals in a computer to comply with § 101. The Examiner should also note the stated practical solution in each claim, which prevents an “abstract

idea" from being unpatentable. Therefore, the claims comply with the requirements of § 101.

35 U.S.C. § 103

The Examiner rejected claims 1-24, 33-48 and 61-70 under 35 U.S.C. § 103 over Bracho in view of Applicant's allegedly admitted prior art. This rejection is respectfully traversed. Case law regarding § 103 rejections was provided in the previous office action and is incorporated herein, but will not be represented here for purposes of clarity.

Bracho is non-analogous art and cannot be combined with the prior devices. The Bracho et al. patent merely shows the use of publishing information by one legacy system using a "universal" language so that a local hub can receive sales information from a Point of Sale system by acting as an intermediate database translation device from the legacy ("proprietary") system to a universally understood data block. The published data is its own end, such as a sales record, and is not used to control the network other than perhaps routing of the data itself to the proper recipient using IP protocol (i.e., "content-based" routing). There is also no "second network" connecting the components. There is also no information received over a second network that controls switches on the first network. For at least these reasons, claim 1 should be allowed over the prior art. One skilled in the art of making advanced telecommunication switches and line modules would not look to a point of sale system or an advertising broadcast system while constructing the switches and modules. Further, what software is easily run in Windows or here, more likely UNIX, would not easily translate to programming network switches. Despite the liberal reading of a computer network as a "switch" and "modules," the two systems are not analogous as one facilitates simple communication of data between two computers running common software, whereas the switches of the current system operate to control

communication lines to steer information from one site to another. The “hub” of Bracho is not similar or analogous in any way to the switch of the current system, despite the fact that the hub may contain a “switch” of some type in it. There is no indication that the switches in the “hub” of Bracho are controllable in anyway by the software and the subscription/publication software as they are merely “dumb” switches that operate to connect the computers in an Ethernet, TCP/IP based system or at best operate to direct the “data” of the publication itself and do not control the switches based on the content to switch a separate communication network. While the Examiner argues that the “network” is “content based,” the hub is not. TCP/IP based systems do not forward based on content, but based on address. And the mere fact that a hub and a switch “can be” similar, does not make the technology between the hub of Bracho and the switch of the present invention similar. The claims as required require network switches connecting trunk lines across line modules and switches. Nowhere is this shown in Bracho. There is no indication in Bracho that this information would be useful or useable in a switch such as the present invention, and there is no teaching as to how a combination would occur.

Further, there is no “teaching” to combine the references. *There must be a suggestion or motivation in the prior art to modify a reference to satisfy the claimed invention. In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984). “*The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.*” *Id.* There is no motivation for combining the references other than hindsight. There is no teaching of controlling an advanced communication network, only the teaching of converting sales information to a universal language so that it can be tracked at a remote location. The

publish/subscribe system is not used to control any advanced devices, but is merely data transferred between personal computers.

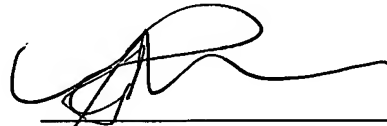
For at least these reasons, the claims should be allowed over the art of record.

Summary

Applicants have made a diligent and bona fide effort to answer each and every ground for rejection or objection to the specification including the claims and to place the application in condition for final disposition. Reconsideration and further examination is respectfully requested, and for the foregoing reasons, Applicant respectfully submits that this application is in condition to be passed to issue and such action is earnestly solicited. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Robert N. Blackmon, Applicants' Attorney at 703-684-5633 to satisfactorily conclude the prosecution of this application.

Dated: March 5, 2007

Respectfully submitted,



Robert N. Blackmon
Reg. No. 39494
Attorney/Agent for Applicant(s)

Merek, Blackmon & Voorhees, LLC
673 S. Washington St.
Alexandria, Virginia 22314
Tel. 703-684-5633
Fax. 703-684-5637
E-mail: RNB@MBV-IP.com